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October 3, 2012

Employer Code: 0231  
CalPERS ID: 3939681776  
Job Number: P10-043

City of Mountain View  
Daniel H. Rich, City Manager  
500 Castro Street  
Mountain View, CA 94039-7540

Dear Mr. Rich:

Enclosed is our final report on the results of the public agency review completed for the City of Mountain View. Your agency's written response, included as an appendix to the report, indicates agreement with the issues noted in the report with the exception of Findings 1 and 2. We reviewed the information contained in your agency's response pertaining to Finding 1 and Finding 2 and did not identify any information to cause us to withdraw the findings. Our recommendations remain as stated in the report. However, after review of your written response, we expanded Finding 1 and revised Finding 2 to further clarify the Findings. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original Signed by Margaret Junker  
MARGARET JUNKER, Chief  
Office of Audit Services

Enclosure

cc: Risk and Audit Committee Members, CalPERS  
Peter Mixon, General Counsel, CalPERS  
Karen DeFrank, Chief, CASD, CalPERS  
Anthony Suine, Chief, BNSD, CalPERS  
Honorable Board Members, City of Mountain View

# **Office of Audit Services**



## **Public Agency Review**

### **City of Mountain View**

**Employer Code: 0231**  
**Job Number: P10-043**

**October 2012**

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# CITY OF MOUNTAIN VIEW

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## RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the City of Mountain View's (City) enrolled individuals, member compensation, and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page three of this report. Specifically, the following findings were noted during the review:

- Non-reportable overtime pay, short term pay, auto allowance and deferred compensation were incorrectly reported as compensation.
- Payrate was inconsistent with the City's salary schedule.
- Work schedule codes were incorrectly reported.
- Temporary/part-time employees who met membership eligibility requirements were not enrolled in CalPERS.

The pertinent sections of the California Government Code and California Code of Regulations for each finding are listed in Appendix C.

## CITY BACKGROUND

The City is a charter city incorporated November 7, 1902. The City Charter was originally approved by voters in 1952 and requires the City to operate under a Council-Manager form of government and provides the following services: public safety (police, fire, and paramedic), public works and utilities, community development, community and leisure services and administration and support services. Memoranda of Understanding (MOU) and employment agreements outline all City employees' salaries and benefits and state the terms of employment agreed upon between the City and its employees.

The City contracted with CalPERS effective February 1, 1949, to provide retirement benefits for local miscellaneous and safety employees. The City's current contract amendment identifies the length of the final compensation period as twelve months for all coverage groups.

All contracting public agencies, including the City, are responsible for the following:

- Determining CalPERS membership eligibility for its employees.
- Enrolling employees into CalPERS upon meeting membership eligibility criteria.
- Enrolling employees in the appropriate membership category.
- Establishing the payrates for its employees.
- Approving and adopting all compensation through its governing body in accordance with requirements of applicable public meeting laws.

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- Publishing all employees' payrates in a publicly available pay schedule.
- Identifying and reporting compensation during the period it was earned.
- Ensuring special compensation is properly identified and reported.
- Reporting payroll accurately.
- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.
- Ensuring the employment of a retired annuitant is lawful and reinstating retired annuitants that work more than 960 hours in a fiscal year.

## SCOPE

As part of the Board approved plan for fiscal year 2010/2011, the OAS reviewed the City's payroll reporting and member enrollment processes as these processes relate to the City's retirement contract with CalPERS.

The review period was limited to the examination of sampled records and processes from April 1, 2008, through March 31, 2011. The on-site fieldwork for this review was conducted on May 9, 2011, through May 13, 2011. The review objectives and a summary of the procedures performed, sample sizes, sample periods and findings are listed in Appendix B.

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**Finding 1:** The City erroneously reported overtime pay, auto allowance, Department Head Special Pay, short term pay and employer paid deferred compensation to CalPERS.

### ***Recommendations:***

Only compensation earnable, as defined by Government Code Section 20636 and the corresponding regulations, can be reported to CalPERS and considered in calculating benefits. The City should discontinue reporting items of compensation that do not meet the definition of compensation earnable.

OAS recommends CASD deny all items reported that do not meet the definition of compensation earnable. CASD should make the appropriate corrections and adjustments to the members' accounts and other areas needing adjustment pursuant to Government Code Section 20160.

### ***Condition:***

OAS determined that payrates and earnings for seven of the 24 sampled employees were erroneously reported to CalPERS in the 12/10-4 and 2/11-4 sampled service periods. Specifically, one employee's compensation included non-reportable overtime and six employees' payrates and earnings included non-reportable items such as auto allowance, Department Head Special Pay, short-term pay and employer paid deferred compensation.

### **Overtime Pay**

OAS sampled a fire captain who was assigned to work an extra shift in an upgraded position on December 23, 2010. Although the City's MOU for fire captains contained a provision that allows an individual to receive an additional 15 percent for working in a position outside of his/her classification, the Public Employees' Retirement Law (PERL) statutes require for pension purposes, that the shift to be part of an individual's normally required work schedule. Further, the PERL also requires that extra duties be the normal duties of an individual's full-time position if the pay is to be reportable for retirement purposes. Government Code Section 20635 defines overtime for the purposes of the PERL, in part, as the aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis. Government Code section 20636(b)(1) defines

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payrate to only include normal monthly rate of pay or base pay of a member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. Section 20636(c)(3) provides that special compensation only includes amounts paid for services rendered during normal working hours and Section 20636(C)(7)(B) provides special compensation does not include payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise. The extra shift worked by the fire captain as a battalion-chief was determined to be overtime pay, as defined by the PERL since it was paid for services performed outside the employee's normal work schedule. The pay also fails to meet the definition of payrate and special compensation. The additional overtime compensation of \$170.56 paid in the 12/10-4 service period does not meet the definition of compensation earnable and is overtime and therefore, it should not have been reported.

## Auto Allowance

OAS found that the City included auto allowance in the City Manager's and Department Heads' reported payrate and earnings. Auto allowance does not meet the definition of compensation earnable for retirement purposes and it should therefore not have been reported.

The City paid the City Manager a monthly auto allowance of \$350.00. The City reported auto allowance bi-weekly in the amount of \$161.54. Additionally, the City paid department heads a monthly auto allowance of \$520.00 and reported a bi-weekly auto allowance of \$240.00. The department heads' allowance was subsequently increased to \$244.00 bi-weekly.

The City stated that the auto allowance was "Department Head Special Pay." The City explained that the allowance was a benefit that the City Manager approves as either merit pay or bonus pay and was not related to any auto allowances. However, the information provided by the City is inconsistent with the City's own website which, in May 2011 included a comparison of benefits document. One of the benefits identified was a \$350.00 per month auto allowance for the City Manager and a \$520.00 auto allowance per month for the City Attorney and Department Heads.

The City disagreed with the auto allowance finding in its response to OAS' May 2012 draft report. The City argued that, in 1996, CalPERS initially identified auto allowance as nonreportable compensation and afterward withdrew its finding since "CalPERS reviewed this issue and concurred with the City that the auto allowance constituted salary for the department heads, the salaries were approved by the City Council and the salaries constituted reportable compensation." Auto allowance is not now, nor has it ever been reportable to CalPERS for retirement purposes.

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Notwithstanding the City's statement related to the 1996 audit, CalPERS must apply the PERL and make determinations consistent with the definitions of compensation earnable. Therefore, after a review of the currently available pertinent information provided by the City pertaining to the City's base payrates, auto allowance, and Department Head Special Pay, OAS determined that neither auto allowance nor Department Head Special Pay meet the definition of compensation earnable. As a result, auto allowance and Department Head Special Pay must remain a finding.

Compensation earnable for retirement purposes is defined as a member's payrate and special compensation. As noted above, payrate is defined as the normal rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. Neither auto allowance nor Department Head Special Pay meets the definition of payrate because the pay is not part of the normal monthly rate of pay or base pay for the positions at issue. It also does not appear to have been paid for services but instead as auto allowance or an amount in lieu of providing an auto allowance. Further, Government Code Section 20636(c), and section 571(a) of the California Code of Regulations exclusively identify and define the reportable items of special compensation. Neither auto allowance nor Department Head Special Pay meet the definition of special compensation given neither are included among those pay types specified in Section 20636(c) or in regulation section 571(a). Therefore, Department Head Special Pay, auto allowance, and any other named compensation item given in lieu of auto allowance do not meet the definition of compensation earnable and should not have been reported to CalPERS.

## Short Term Pay

The City incorrectly reported payments made to an employee who was assigned additional duties. In August 2008, the Police Chief received a ten percent increase for performing additional duties regularly assigned to the Fire Chief. As a result, the reported payrate for the Police Chief exceeded the publicly available pay schedule's base pay by ten percent. This extra pay continued through the end of our review period in March 2011. Payments associated with this short term pay do not meet the definition of compensation earnable for CalPERS retirement purposes and it should not have been reported.

The amount paid in this case does not meet the definition of payrate in Government Code Section 20636(b)(1) because it was not the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours pursuant to publicly available pay schedules. It also fails to meet the definition of payrate for a member who is not in group or class because it is not the monthly rate of pay or base pay paid in cash and pursuant to publicly



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available pay schedules, for services rendered on a full-time basis during normal working hours. Rather, it was pay for additional services usually performed by a different position. The City acknowledges in its response to the draft report that the pay in this case was for, “work assignments and duties for a short period of time in addition to those duties already assumed by the employee....” Government Code Section 20635 states that overtime, as defined by the PERL, shall be excluded from final compensation calculations. Overtime includes hours worked in excess of the hours of work considered normal for employees on a full-time basis. If a member concurrently renders services in two or more positions, one or more of which is full-time, service in the part-time position constitutes overtime. Any pay that meets the definition of overtime under the PERL should not be reported.

Government Code Section 20636(c)(3) provides that special compensation shall be for services rendered during normal work hours. Section 20636(c)(7)(B) and (C) specify that special compensation does not include payments made for additional services rendered outside normal working hours, whether paid lump sum or otherwise and other payments the board has not affirmatively determined to be special compensation. The Board has not affirmatively determined the type of pay at issue here to be special compensation and it does not meet the definition for special compensation because it was for additional services rendered for duties of another position.

Section 571(a)(3) of the California Code of Regulations defines temporary upgrade pay as compensation “to work in an upgraded position/classification of limited duration.” All special compensation, including temporary upgrade pay, must be performed during normal hours of employment. However, in this case, the member performed duties in more than one position (Police Chief and Fire Chief) and therefore, the additional pay associated with services performed in the second position, (Fire Chief) constitute overtime under the PERL and do not meet the definition of special compensation, payrate, or compensation earnable.

Compensation earnable defined under Government Code Section 20636(g), including Out of Class pay, is strictly limited to employees working for the State of California and therefore would not apply here.

### Deferred Compensation

The City incorrectly reported employer payments to a deferred compensation plan as payrate and earnings for a City Manager. An employment history report obtained from the City indicated the City increased the City Manager's salary effective December 3, 2009, pursuant to a City resolution dated December 2, 2008, to include payments to a deferred compensation plan. Employer made payments to a deferred compensation plan do not meet the definition of payrate. Further, Government Code Section 20636(c), and section 571(a) of the California Code of

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Regulations exclusively identify and define the reportable items of special compensation and this list does not include employer paid deferred compensation. Therefore, employer paid deferred compensation payments do not meet the definition of compensation earnable for CalPERS retirement purposes and should not have been reported.

***Criteria:***

Government Code: §20160, §20635, §20630(a), § 20636(a), § 20636(b)(1), §20636(c)(1), §20636(c)(3), § 20636(c)(6), §20636(c)(7), §20636(d)

California Code of Regulations: § 571(a)

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**Finding 2:** The City did not have a pay schedule that listed the reported payrates.

***Recommendations:***

The City should only report payrates approved by the City Council and as included on publicly available pay schedules. Special compensation should be reported separately from payrate and earnings.

OAS recommends CASD make the necessary payrate and payroll reporting adjustments to the members' accounts, if any.

***Condition:***

The department heads' payrates were not consistent with the publicly available pay schedule due to the Department Head Performance Based Compensation program instituted in December 2006. The program provided a performance bonus paid to those employees that received an outstanding performance evaluation. The City incorrectly reported merit and performance bonuses as part of its employees' base payrates and regular earnings, which caused the reported base payrates to exceed the payrates listed on the publicly available pay schedules. Merit and performance bonuses should be reported separately, as special compensation.

In addition, the City under-reported a payrate for one sampled employee in the 12/10-4 service period. Specifically, the employee participated in a Voluntary Time Off (VTO) program which allowed the employee to work less than a 40 hour work week. OAS determined that the employee who participated in the VTO program worked 32 hours per week from August 23, 2010, to December 25, 2010. The City paid and reported \$4,128.39 as the employee's payrate and earnings during this period. The City should have reported the employee's actual full-time equivalent payrate of \$5,160.49 per month and actual earnings of \$4,128.39 per month.

***Criteria:***

Government Code: § 20636(a), § 20636(b)(1), § 20636(c)(1), §20636(d)

California Code of Regulations: § 570.5

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**Finding 3:** The City reported an incorrect work schedule code.

***Recommendations:***

The City should immediately begin reporting the appropriate work schedule code for employees regularly assigned to work a normal work schedule of 56 hours per week.

OAS recommends CASD work with the City to determine the impact of the payroll reporting error and to correct the work schedule for the City's shift firefighters.

***Condition:***

The City reported an incorrect work schedule code of 173 for four shift firefighters regularly assigned to work a normal work schedule of 56 hours per week, or an average of 242 hours per month. The correct work schedule code for the monthly payrate reporting for shift firefighters working an average of 56 hours per week is 242.

***Criteria:***

CalPERS Procedure Manual states, page 99

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**Finding 4:** The City did not enroll eligible temporary/part-time employees into CalPERS membership.

***Recommendation:***

The City should implement procedures to review all hours worked by temporary/part-time employees in a fiscal year in order to enroll its employees upon meeting the 1,000-hour membership eligibility requirement.

OAS recommends CASD work with the City to ensure employees who meet membership eligibility requirements are enrolled into CalPERS membership timely.

***Condition:***

OAS reviewed a sample of six temporary/part-time employees who worked in fiscal years 2008/2009 and 2009/2010. OAS determined that three employees met membership eligibility requirements by working more than 1,000 hours in the 2009/2010 fiscal year but were not enrolled into membership.

- Two employees exceeded 1,000 hours worked in fiscal year 2009/2010. One employee worked a total of 1003.25 hours and another worked a total of 1023.50 hours by service period 7/10-3; however, the City did not enroll either employee into membership.
- One employee exceeded 1,000 hours worked in fiscal year 2009/2010. The individual worked a total of 1015.50 hours by service period 6/10-4; however, the City did not enroll the employee into membership.

***Criteria:***

Government Code: § 20044, § 20305(a)

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## CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix B. OAS limited the test of transactions to employee samples selected from the City's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, California Code of Regulations.

Respectfully submitted,

Original Signed by Margaret Junker  
MARGARET JUNKER, CPA, CIA, CIDA  
Chief, Office of Audit Services

Date: October 2012  
Staff: Michael Dutil, CIA, Senior Manager  
Diana Thomas, CIA, CIDA, Manager  
Adeeb Alzanoon  
Edward Fama

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**CITY OF MOUNTAIN VIEW**

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# **APPENDIX A**

## **BACKGROUND**

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## BACKGROUND

### California Public Employees' Retirement System

The California Public Employees' Retirement System (CalPERS) provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CalPERS Customer Account Services Division (CASD) manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts. CalPERS Benefit Services Division (BNSD) sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employer's knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.



# **APPENDIX B**

## **OBJECTIVES**

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## OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the City complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the City's retirement contract with CalPERS were followed.

This review covers the period of April 1, 2008, through March 31, 2011. OAS completed a prior review covering the period of July 1, 1990, through June 30, 1993.

## SUMMARY

### Procedures, Sample Sizes, Sample Periods, and Findings

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the City's personnel and payroll procedures, reviewed documents, and performed the following procedures. Related sample sizes, sample periods and findings are listed.

- ✓ Reviewed:
  - Provisions of the Contract and contract amendments between the City and CalPERS
  - Correspondence files maintained at CalPERS
  - City Council minutes and City Council resolutions
  - City written labor policies and agreements
  - City salary, wage and benefit agreements including applicable resolutions
  - City personnel records and employee hours worked records
  - City payroll information including Summary Reports and PERS listings
  - Other documents used to specify payrate, special compensation and benefits for all employees
  - City ordinances as necessary
  - Various other documents as necessary
- ✓ Reviewed City payroll records and compared the records to data reported to CalPERS to determine whether the City properly reported compensation.

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Sample Size and Period: Reviewed 24 employees covering two sampled service periods - the second service period in December 2010 (12/10-4) and second service period in February 2011 (2/11-4).

**See Finding 1:** The City erroneously reported non-reportable compensation in the form of overtime pay, short term pay, auto allowance, Department Head Special Pay and employer paid deferred compensation to CalPERS.

- ✓ Reviewed City payroll records and compared the records to data reported to CalPERS to determine whether the City reported compensation earnable.

## No Finding

- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to City public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the City's governing body in accordance with requirements of applicable public meeting laws.

Sample Size and Period: Reviewed 24 sampled employees in the second service periods of December 2010 (12/10-4) and February 2011 (2/11-4).

**See Finding 2:** The City reported payrates that were not consistent with their pay schedule.

- ✓ Reviewed PERS listing reports to determine whether the following payroll reporting elements were reported correctly: contribution code, pay code, work schedule code, service period, and member contributions.

Sample Size and Period: Reviewed 24 sampled employees in the second service periods of December 2010 (12/10-4) and February 2011 (2/11-4).

**See Finding 3:** The City reported an incorrect work schedule code.

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- ✓ Reviewed PERS listing to determine whether contribution codes were reported correctly.

## **No Finding**

- ✓ Reviewed PERS listing to determine whether pay codes were reported correctly.

## **No Finding**

- ✓ Reviewed the City's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership eligibility requirements.

Sample Size and Period: Reviewed six temporary/part-time employees in fiscal years 2008/2009 and 2009/2010.

**See Finding 4:** The City did not enroll temporary/part-time employees who met eligibility requirements to become CalPERS members.

- ✓ Reviewed the City's enrollment practices for retired annuitants to determine if retirees were reinstated when 960 hours were worked in a fiscal year.

Sample Size and Period: Reviewed five retired annuitants in fiscal years 2008/2009 and 2009/2010.

## **No Finding**

- ✓ Reviewed the City's enrollment practices pertaining to independent contractors to determine whether individuals worked in employer/employee relationships.

Sample Size and Period: Reviewed 10 independent contractors in calendar years 2008 and 2009.

## **No Finding**

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- ✓ Reviewed the City's calculation and reporting of unused sick leave balances.

Sample Size and Period: Reviewed eight retiring members covering the review period April 1, 2008, through March 31, 2011.

**No Finding**

# **APPENDIX C**

## **CRITERIA**

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## CRITERIA

Government Code § 20044, defines a fiscal year as:

Any year commencing July 1<sup>st</sup> and ending June 30<sup>th</sup> next following.

Government Code § 20160 states:

a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

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(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

Government Code § 20305 subdivision (a), states, in part:

An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system unless: (3)(B) The person... completes 1,000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which...1,000 hours of service were completed.

Government Code § 20630, subdivision (a), states, in part:

Compensation means the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours or for time during which the member is excused from work.

Government Code § 20635, states, in part:

When the compensation of a member is a factor in any computation to be made under this part, there shall be excluded from those computations any compensation based on overtime put in by a member whose service retirement allowance is a fixed percentage of final compensation for each year of credited service. For the purposes of this part, overtime is the aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid.

Government Code § 20636, subdivision (a), defines compensation earnable by a member as, "The payrate and special compensation of the member."

Government Code § 20636, subdivision (b)(1), defines payrate, as:

The normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

Government Code § 20636, subdivision (c)(1), states:



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Special compensation of a member includes a payment received for special skills, knowledge, abilities, work assignments workday or hours or other work conditions.

Government Code § 20636, subdivision (c)(3), states:

Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

Government Code § 20636, subdivision (c)(6), states, in part:

The board shall promulgate regulations that delineate more specifically and exclusively what constitutes special compensation....

Government Code § 20636, subdivision (c)(7)(B), states:

Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.

Government Code § 20636, subdivision (c)(7)(C), states:

Other payments the board has not affirmatively determined to be special compensation.

Government Code § 20636, subdivision (d), states:

Notwithstanding any other provision of law, payrate and compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

California Code of Regulations § 570.5, provides:

(a) For purposes of determining the amount of “compensation earnable” pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- (1) Has been duly approved and adopted by the employer’s governing body in accordance with requirement of applicable public meetings laws;
- (2) Identifies the position title for every employee position;
- (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer’s internet website;
- (6) Indicates an effective date and date of any revisions;

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## CITY OF MOUNTAIN VIEW

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(7) Is retained by the employer and available for public inspection for not less than five years; and

(8) Does not reference another document in lieu of disclosing the payrate.

California Code of Regulations § 571, subdivision (a), provides a list that exclusively identifies and defines special compensation items. This regulation does not include overtime pay, auto allowance, short term pay and employer paid deferred compensation as an item of special compensation.

### ***CalPERS Procedure Manual***

CalPERS Procedure Manual, page 99, states, in pertinent part, The 'Work Schedule Code' is a 3-digit numeric code, used in calculating both employer rate and member's retirement benefit. It identifies what you, the employer, consider to be full-time employment for employees in the same work group, such as by department or duties, but not by individual employee. Approved work schedule codes range from 34 to 60 hours per week. The work schedule code typically will not vary from report to report.

CalPERS Procedures Manual, page 293, identifies the correct work schedule code for monthly reporting as 242 for full-time employees who work 56 hours per week.

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**CITY OF MOUNTAIN VIEW**

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# **APPENDIX D**

## **STATUS OF PRIOR REVIEW**

**FOLLOW UP ON PRIOR REVIEW FINDINGS  
CITY OF MOUNTAIN VIEW  
PRIOR REVIEW P03-065, DATED NOVEMBER 1996**

<i>Prior Review Finding</i>	<i>Prior Review Recommendation</i>	<i>Status of Prior Recommendation</i>
<p>1. The City reported standby pay for 11 employees in the Shoreline and Water Departments.</p> <p>The City reported the unused portion of disability insurance allowance as compensation for 7 firefighters.</p>	<p>The City and the CalPERS Member Services Division should ensure that standby pay and unused disability insurance allowance are not reported.</p>	<p>Implemented. No similar observations were noted.</p>
<p>2. The City did not report uniform purchases and the associated laundry costs for its firefighters.</p>	<p>The City should immediately begin reporting the uniform purchases and laundry costs as compensation.</p>	<p>Implemented. No similar observation was noted.</p>
<p>3. The City did not enroll all temporary and season employees who qualified for membership.</p>	<p>The City should ensure that any other employees working more than 1,000 hours in a fiscal year are enrolled.</p>	<p>Implemented. Though a similar observation was noted, the City tracked the hours that the employees worked but used incorrect start and end dates to calculate hours worked.</p>
<p><u>Conclusion:</u> The City implemented all of the recommendations of our prior review dated November 1996.</p>		

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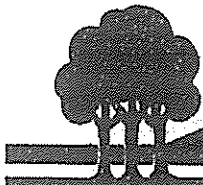
**CITY OF MOUNTAIN VIEW**

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# APPENDIX E

## CITY RESPONSE

**NOTE: The City provided additional informational attachments to the response which have been intentionally omitted from this appendix.**



# CITY OF MOUNTAIN VIEW

## OFFICE OF THE CITY MANAGER

500 Castro Street • Post Office Box 7540 • Mountain View, California 94039-7540  
650-903-6301 • FAX 650-962-0384

June 25, 2012

Ms. Margaret Junker, Chief  
Office of Audit Services  
California Public Employees' Retirement System  
P.O. Box 942701  
Sacramento, CA 94229-2701

CITY OF MOUNTAIN VIEW DRAFT REPORT DATED MAY 2012  
CALPERS ID: 3939681776—EMPLOYER CODE 0231—JOB NUMBER: P10-043

Dear Ms. Junker:

The City of Mountain View (City) is in receipt of the above-referenced report regarding the compliance review in relation to the City of Mountain View's contract with the California Public Employees' Retirement System (CalPERS). This letter provides the City's written responses to the findings of the report. We appreciate the extension granted for the City's responses to June 25, 2012.

The City responds as follows:

**Finding 1: The City erroneously reported overtime pay, auto allowance, short-term pay and employer paid deferred compensation to CalPERS.**

### Overtime Pay

The City understands the finding, does not contest the finding, and will implement the changes as soon as practical after notifying affected employees and making the necessary changes in the payroll system.

### Auto Allowance

The City disagrees with this finding. In 1996, CalPERS issued a similar finding during its audit of the membership and payroll reporting process of the City. While CalPERS initially identified auto allowance as nonreportable compensation, CalPERS reviewed this issue and concurred with the City that the auto allowance constituted salary for the department heads, the salaries were approved by the City Council and the salaries constituted reportable compensation. CalPERS withdrew the auto allowance issue from the findings of the November 8, 1996 final report (see Enclosure A). Since 1996, CalPERS has allowed the City to rely on the audit report findings and permitted the City to report this compensation.

City staff worked directly with CalPERS staff to craft resolution language acceptable to CalPERS to ensure this element of the department heads' compensation was reportable as special compensation. In 1999, the City Council adopted the resolution as directed by CalPERS staff, designating that department heads receive special compensation in accordance with Government Code Section 20636. In reliance on the actions and representations of CalPERS, the City has reported this compensation to CalPERS and both the City and the employees have made contributions to the CalPERS system on this compensation.

During the initial stages of the 2012 audit, the City corresponded directly with CalPERS again on the issue of auto allowance/special compensation and was informed the special compensation was reportable.

### Short-Term Pay

The City disagrees with this finding. The short-term pay qualifies as "special compensation" because the City pays employees additional compensation for his or her special skills, knowledge, abilities and work assignments. When an employee assumes work assignments and duties for a short period of time in addition to those duties already assumed by the employee, the City uses the term "short-term pay" for internal purposes to distinguish the pay type. Government Code Section 20636(g)(3)(B) defines "special compensation" to include out-of class pay. The City's short-term pay is out-of-class pay as defined by CalPERS and qualifies as special compensation. Short-term pay cannot be considered overtime because it can be granted to exempt employees and exempt employees are not eligible for overtime pay.

### Deferred Compensation

The City understands and does not contest the finding. Deferred compensation is a benefit provided to the City Manager. The former City Manager recently retired and the deferred compensation is no longer reported as either pay rate or earnings to CalPERS.

**Finding 2: The City did not accurately report pay rates to CalPERS.**

### Pay Rates Over-Reported

The City disagrees with this finding. The City's compensation program for department heads and all management and professional staff has been duly approved and adopted by the City Council. Under that program, salary increases may be granted, based on performance, on the following basis:

1. Department Heads—allows the City Manager to grant salary increases of up to 10 percent over the salary range reported on the salary schedule, based on performance.
2. Management Employees—allows the City to grant salary based on 80 percent to 120 percent of the control point reported on the salary schedule, based on performance.
3. Professional Employees—allows the City to grant salary based on 85 percent to 115 percent of the control point reported on the salary schedule, based on performance.

In follow-up conversation with Mr. Fama, he stated all salaries must be included in a single document such as a salary schedule.

For the department heads, the department head's salary range is determined by the salary schedule and the City Manager's authority to grant salary of up to 10 percent above the range was established in Resolution 17167, dated December 12, 2006. The salary range reported on the salary schedule currently does not include the allowable salary increase of up to 10 additional percent above the range on the salary schedule.



The salary schedule will be modified to include the maximum possible compensation and comply with the requirement for a publicly available pay schedule.

The City utilizes a control-point system whereby the control point represents 100 percent of the salary; however, the salary range for employees can range from 80 percent to 120 percent for management employees and 85 percent to 115 percent for professional employees. Only the control point is listed on the City's salary plan; however, the control point range was established by the City Council on June 25, 1980.

In discussion with Mr. Fama, the City's salary schedule should be a stand-alone, publicly available document and not refer to another document. For the management and professional employees, it is also the City's understanding CalPERS requires the full salary range for these positions to be included on the salary schedule and, furthermore, the range should not be greater than 20 percent. Any amounts greater than reported on the salary schedule would be considered merit pay and should be reported as special compensation.

The City will modify the salary schedule to clarify the maximum possible salaries in accordance with the control point system.

Mr. Fama also offered to provide sample salary schedules for other agencies that comply with CalPERS specifications. We would appreciate receiving such examples.

#### Pay Rates Under-Reported

The City does not dispute this finding. This item refers to the City's Voluntary Time Off (VTO) program whereby the City was reducing the employees' pay rate and maintaining the employee full-time status instead of maintaining the employees' pay rate and reducing the employee status. The City has modified its VTO program to comply with the CalPERS finding.

#### **Finding 3: The City reported an incorrect work schedule code.**

The City does not dispute this finding. The City was not aware of reporting an incorrect work schedule for its shift Firefighters. The City will implement the recommendation once it has had sufficient time to notify the affected employees.

Ms. Margaret Junker  
June 25, 2012  
Page 5

**Finding 4: The City did not enroll eligible temporary/part-time employees into CalPERS membership.**

The City does not dispute this finding. The City has monitored and enrolled temporary/part-time employees in a fiscal year upon an employee meeting the 1,000-hour membership eligibility requirement. The City's payroll cycle is biweekly and the City had previously been advised by CalPERS staff that it could follow the payroll fiscal year, which can vary from a July 1 to June 30 fiscal year by up to 14 days. Once advised by Mr. Fama the fiscal year is based on July 1 to June 30, the City has implemented and followed this time frame for determining employee eligibility of 1,000 hours for enrollment.

Conclusion

The City appreciates the opportunity to provide responses to the review findings and additional consideration based on the responses provided. Please do not hesitate to contact Patty Kong, Finance and Administrative Services Director, at (650) 903-6006, or me, at (650) 903-6601, if you need additional information.

Sincerely,



Daniel H. Rich  
City Manager

DHR/LS/5/MGR  
679-06-22-12L-E^^

Enclosure: A. Final Report, City of Mountain View, November 8, 1996